

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jan 13, 2022**

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

GENERAL CASUALTY COMPANY  
OF WISCONSIN, a/s/o Energy  
Challenges LLC,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC., a  
Delaware corporation,

Defendant.

No. 1:20-CV-03158-JPH

ORDER STRIKING MOTION FOR  
SUMMARY JUDGMENT AND  
AMENDED SCHEDULING ORDER;  
AND SETTING DEADLINES FOR  
RESPONSE

**ECF No. 13**

Before the Court is United Parcel Service, Inc.'s (an Ohio corporation)  
Motion for Summary Judgment, ECF No. 13. The parties consented to proceed  
before a magistrate judge. ECF No. 6. The undersigned has reviewed the motion  
and the record herein and is fully informed.

This case concerns the interstate shipment of goods by non-party Energy  
Challenges, LLC, the shipper, which were allegedly damaged during transport and  
insured by Plaintiff. On October 5, 2020, Plaintiff filed a Complaint naming sole

defendant, United Parcel Service, Inc., a Delaware corporation, seeking subrogation in the amount of \$19,560.57 under the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706, for property loss caused by “the delivering carrier.” ECF No. 1 at 3.

For the reasons discussed below, the Motion for Summary Judgment (ECF No. 13) and deadlines remaining in the Scheduling Order (*see* ECF No. 25) are stricken.

### FACTUAL BACKGROUND

On June 8, 2018, Energy Challenges LLC tendered approximately three pallets of electrical equipment to a third party for shipment from Cudahy, Wisconsin to Goldendale, Washington. ECF No. 1 at 2; ECF No. 16 at 2, ¶ 1. An electronic bill of lading attached as Exhibit A to Plaintiff’s Complaint identifies “UPS Freight” as the carrier:

Carrier:	UPS Freight-UPSG *LTL ONLY*
Pro#:	
Load#:	267314009

*See* ECF No. 1 at 6; ECF No. 16 at 2, ¶ 2; ECF No. 19 at 5, ¶ 19. The shipping label on one of the allegedly damaged packages contains the tracking number “PRO #441922515” and identifies “UPS Freight” as the carrier. ECF No. 16 at 2, ¶ 3.

## PROCEDURAL BACKGROUND

### A. Pleadings

On October 5, 2020, Plaintiff commenced this action naming “United Parcel Service, Inc., a Delaware corporation” (herein after UPS-Delaware) as the sole defendant, both in the caption and in the body of the Complaint. ECF No. 1 at 1-2. The Complaint also alleged that the defendant has its principal place of business in Atlanta, Georgia and is an “interstate motor carrier operating pursuant to authority issued to it by the Federal Motor Carrier Safety Administration (“FMCSA”).” ECF No. 1 at 2, ¶ 2.2. Plaintiff asserts a claim under the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706, for property loss caused by “the delivering carrier.” ECF No. 1 at 3.

On January 15, 2021, a subsidiary of UPS-Delaware with the same name, “United Parcel Service, Inc.,” but organized in the state of Ohio (herein referred to as UPS-Ohio), filed the Answer to the Complaint. ECF No. 3. The Answer includes an admission that UPS-Ohio is a motor carrier, but states it is organized under the law of the state of Ohio, not Delaware. ECF No. 3. UPS-Ohio also filed a corporate disclosure statement, identifying itself as the defendant, an Ohio corporation, and a “wholly owned indirect subsidiary of United Parcel Service, Inc. (a Delaware corporation).” ECF No. 4 at 1. The corporate disclosure statement also reported that “United Parcel Service, Inc. (a Delaware corporation) is publicly

1 traded, has no parent corporation, and no public corporation owns ten percent or  
2 more of its stock.” ECF No. 4 at 1-2.

3 After the Answer was filed, Plaintiff never sought to amend the Complaint  
4 or correct the caption to name the Ohio subsidiary. UPS-Delaware, the named  
5 defendant in the caption, has not appeared. UPS-Ohio did not motion the Court for  
6 intervention.

7 **B. Discovery**

8 UPS-Ohio, assuming it was the intended defendant, proceeded to investigate  
9 this case and engage Plaintiff in discovery. Discovery responses dated April 9,  
10 2021 included the following statement in a footnote:

11 The Complaint names United Parcel Service, Inc. as the defendant and  
12 alleges that United Parcel Service, Inc., the motor carrier, was the carrier of  
13 the package at issue in the litigation. Based on those allegations, UPS  
14 understands the Complaint to treat United Parcel Service, Inc., the Ohio  
15 company, as the intended defendant, even though the Complaint incorrectly  
16 alleges that UPS is incorporated in Delaware.

17 ECF No. 15-5 at 3, n1; *see also* ECF No. 15-6 at 3 (initial disclosures dated May  
18 14, 2021, noting the Delaware corporation, United Parcel Service, Inc., was named  
19 in the Complaint, but that “the small package motor and air carrier, is an Ohio  
20 corporation”). On June 25, 2021, defense counsel contacted Plaintiff’s counsel and  
asked if Plaintiff intended to “amend its pleading to name the proper party.” ECF  
No. 15-9 at 2. On June 30, 2021, defense counsel followed up on this email

1 seeking response. ECF No. 15-10 at 2. As of October 15, 2021, defense counsel  
2 had not received a response to these June 2021 emails. ECF No. 15 at 5.

### 3 **C. Motion for Summary Judgment**

4 On October 15, 2021, UPS-Ohio filed a Motion for Summary Judgment.  
5 ECF No. 13. UPS-Ohio seeks dismissal of this action, claiming Plaintiff has  
6 misidentified it as a defendant as it was not the carrier of the goods at issue in this  
7 case.<sup>1</sup> ECF No. 13 at 8. UPS-Ohio states that “UPS personnel” conducted a  
8 search for the tracking number at issue in this case “across several UPS systems,”  
9 including “UPS’s primary tracking system.” ECF No. 14 at 2, ¶ 2. The tracking  
10 number does not match any shipments in databases searched and does not conform  
11 to UPS-Ohio’s tracking numbers, which typically start with the prefix “1Z.” ECF  
12 No. 16 at 2-3, ¶ 5. UPS-Ohio claims to provide “small package carrier” services,  
13 not freight. ECF No. 20 at 2. UPS-Ohio informed Plaintiff that it was not the  
14 carrier of the subject shipments. ECF No. 16 at 3, ¶ 7. Plaintiff filed a response to  
15 the motion, ECF No. 17, and UPS-Ohio replied, ECF Nos. 20.

16 Although UPS-Delaware has yet to appear in this action, Plaintiff’s  
17 summary judgment response refers to UPS-Delaware as the defendant, with  
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19 <sup>1</sup> UPS-Ohio represents in its Reply that it suspects the carrier was UPS Ground  
20 Freight, Inc., however, this statement is not supported. ECF No. 20 at 4, n1.

1 references to its status as a publicly traded company with subsidiaries. *See* ECF  
2 Nos. 17, 18, 19. Plaintiff contends summary judgment is not appropriate because a  
3 question of fact exists as to whether UPS-Delaware should be held liable as the  
4 carrier of the subject freight. ECF No. 17 at 5.

### 5 **DISCUSSION**

6 The summary judgment materials reflect a fundamental confusion as to the  
7 identity of the defendant because two corporations with the name “United Parcel  
8 Service, Inc.” exist. Plaintiff named the Delaware parent corporation, and the Ohio  
9 subsidiary appeared. Generally, a parent company has a separate corporate  
10 existence from its subsidiary and is treated separately from the subsidiary in the  
11 absence of circumstances justifying disregard of the corporate entity. *See United*  
12 *States v. Bestfoods*, 524 U.S. 51, 61 (1998) (“It is a general principle of corporate  
13 law deeply ‘ingrained in our economic and legal systems’ that a parent  
14 corporation ... is not liable for the acts of its subsidiaries”); *Quaker State Dyeing &*  
15 *Finishing Co., Inc., v. ITT Terryphone Corp.*, 461 F.2d 1140, 1142 (3d Cir. 1972)  
16 (“[A] subsidiary corporation which is incorporated as a separate entity from its  
17 parent corporation is considered to have its own principal place of business.”). The  
18 law allows a corporation to organize so as to isolate liabilities among separate  
19 entities.

1 Here, the caption of the Complaint identifies UPS-Delaware as the only  
2 named defendant and it appears it was the only entity summoned. *See* ECF No. 2  
3 (Court issued summons to United Parcel Service, Inc., 55 Glenlake Parkway NE.,  
4 Atlanta, GA 30328); ECF No. 18 at 11 (SEC filing identifying Atlanta address for  
5 UPS-Delaware). Plaintiff has not filed proof of service and the parties' joint status  
6 report only indicates that service of process was completed "on defendant" on  
7 October 15, 2020. ECF No. 7 at 2. There is no evidence of record that UPS-Ohio  
8 was ever served and UPS-Ohio has not motioned the Court to intervene. If UPS-  
9 Ohio was not the entity served, it was misguided of UPS-Ohio to ignore the  
10 summons and Complaint and assume that the wrong entity had been named.  
11 Plaintiff has also failed to acknowledge UPS-Ohio's appearance in this case,  
12 recognize it as a separate entity, or respond to statements in the record (and in  
13 discovery) asserting the assumption that Plaintiff intended to name a different  
14 entity defendant.

15 Based on the current record, it appears that the subsidiary UPS-Ohio is not  
16 the named, served, or intended party in this case, and UPS-Ohio has overlooked  
17 the procedural requirements of Federal Rule of Civil Procedure 24 governing  
18 intervention. As neither Plaintiff nor UPS-Ohio have addressed these threshold  
19 procedural issues, **IT IS HEREBY ORDERED:**

20 1. UPS-Ohio's Motion for Summary Judgment, **ECF No. 13**, is

1 **STRICKEN** with leave to renew if it the Court finds it has obtained status as a  
2 named or intervening party.

3 2. Counsel for Plaintiff and UPS-Ohio shall confer regarding the issues  
4 identified in this Order by not later than **January 31, 2022** and file an affidavit  
5 attesting to compliance with this directive. Plaintiff shall file the proof of service  
6 of the Complaint by not later than **January 31, 2022**.

7 3. By not later than **February 7, 2022**, Plaintiff and UPS-Ohio shall file a  
8 response or motion(s), addressing the issues herein.

9 4. All remaining deadlines in the amended scheduling order, **ECF No.**  
10 **25**, including the trial date are **STRICKEN** and will be re-set at a later date.

11 The District Court Executive is directed to file this Order and provide copies  
12 to counsel.

13 DATED January 13, 2022.

14 s/James P. Hutton  
15 JAMES P. HUTTON  
16 UNITED STATES MAGISTRATE JUDGE  
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